

## HOUSE BILL NO. 126

INTRODUCED BY C. YOUNKIN

BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE PROCEDURAL PROVISIONS OF THE WATER TREATMENT PLANT OPERATORS CERTIFICATION LAWS, THE COMPREHENSIVE ENVIRONMENTAL CLEANUP AND RESPONSIBILITY ACT, THE SANITATION IN SUBDIVISIONS LAWS, THE STRIP AND UNDERGROUND MINE SITING ACT, THE COAL AND URANIUM MINE RECLAMATION LAWS, THE METAL MINE RECLAMATION LAWS, AND THE OPENCUT MINING ACT; PROVIDING FOR HEARINGS BEFORE THE BOARD OF ENVIRONMENTAL REVIEW RATHER THAN THE DEPARTMENT OF ENVIRONMENTAL QUALITY; CLARIFYING PERMIT DENIAL HEARING REQUIREMENTS UNDER THE METAL MINE RECLAMATION LAWS; REVISING THE TIME WITHIN WHICH A HEARING MUST BE HELD UNDER THE OPENCUT MINING ACT; TRANSFERRING THE RESPONSIBILITY FOR HOLDING A HEARING UNDER THE OPENCUT MINE ACT FROM THE DEPARTMENT TO THE BOARD; ~~AND~~ AMENDING SECTIONS 37-42-102, 37-42-321, 75-10-714, 76-4-108, 76-4-126, 82-4-112, 82-4-130, 82-4-205, 82-4-206, 82-4-254, 82-4-338, 82-4-353, 82-4-361, 82-4-362, 82-4-422, 82-4-427, AND 82-4-441, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, certain environmental statutes administered by the Montana Department of Environmental Quality provide that a person aggrieved by a decision of the Department may appeal that decision to the Director of the Department; and

WHEREAS, the possibility of an appeal prevents the Director from becoming involved in certain Department decisions that are subject to appeal to the Director; and

WHEREAS, section 82-4-427, MCA, states that a contested case hearing requested under The Opencut Mining Act must be held within 30 days after the hearing is requested; and

WHEREAS, it is difficult for the Department to conduct a contested case hearing under that Act within 30 days after the hearing is requested; and

WHEREAS, certain revisions to statutes administered by the Department are necessary for clarity and consistency and to conform the statutes to current drafting style.

1 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

2

3 **Section 1.** Section 37-42-102, MCA, is amended to read:

4 **"37-42-102. Definitions.** Unless the context requires otherwise, in this chapter, the following  
5 definitions apply:

6 (1) "Board" means the board of environmental review provided for in 2-15-3502.

7 ~~(1)~~(2) "Certificate" means a certificate of competency issued by the department, stating that the  
8 operator holding the certificate has met the requirements for the specified operator classification of the  
9 certification program.

10 ~~(2)~~(3) "Community water system" means the term as defined in 75-6-102.

11 ~~(3)~~(4) "Council" means the water and wastewater operators' advisory council provided for in  
12 2-15-2105.

13 ~~(4)~~(5) "Department" means the department of environmental quality provided for in 2-15-3501.

14 ~~(5)~~(6) "Nontransient noncommunity water system" means a public water system, as defined in  
15 75-6-202, that is not a community system and that regularly serves at least 25 of the same persons for  
16 at least 6 months a year.

17 ~~(6)~~(7) "Operator" means the person in direct responsible charge of the operation of a water  
18 treatment plant, water distribution system, or wastewater treatment plant.

19 ~~(7)~~(8) "State waters" means the term as defined in 75-6-102.

20 ~~(8)~~(9) "Wastewater treatment plant" means a facility that:

21 (a) is designed to remove solids, bacteria, or other harmful constituents of sewage, industrial  
22 wastes, or other wastes;

23 (b) discharges an effluent directly into state waters; and

24 (c) is part of either an industrial waste discharge system or a public sewage system as defined  
25 in 75-6-102.

26 ~~(9)~~(10) "Water distribution system" means that portion of the water supply system that conveys  
27 water from the water treatment plant or other supply source to the premises of the consumer and that is  
28 part of a community water system or a nontransient noncommunity water system.

29 ~~(10)~~(11) "Water supply system" means a system of pipes, structures, and facilities through which  
30 water is obtained, treated, sold, distributed, or otherwise offered to the public for household use or use

1 by humans and that is part of a community water system or a nontransient noncommunity water system.  
2 ~~(11)~~(12) "Water treatment plant" means that portion of the water supply system that alters either  
3 the physical, chemical, or bacteriological quality of the water and renders it safe and palatable for human  
4 use."

5  
6 **Section 2.** Section 37-42-321, MCA, is amended to read:

7 **"37-42-321. Revocation of operator's certificate -- disciplinary action by department.** (1) The  
8 department may ~~revoke~~ issue an order revoking the certificate of an operator, ~~following a hearing by the~~  
9 ~~department, when it is found~~ the department finds that:

10 (a) the operator has practiced fraud or deception;

11 (b) reasonable care, judgment, or the application of ~~his~~ the operator's knowledge or ability was  
12 not used in the performance of ~~his~~ the operator's duties; or

13 (c) the operator is incompetent or unable to properly perform ~~his~~ the operator's duties.

14 (2) The department may ~~take~~ issue an order taking any disciplinary action ~~pursuant to~~ listed in  
15 37-1-136.

16 (3) A person aggrieved by an order of the department under this section may request a hearing  
17 before the board by submitting a written request stating the reason for the request within 30 days after  
18 receipt of the department's decision.

19 (4) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter  
20 4, part 6, apply to a hearing held under this section."

21  
22 **Section 3.** Section 75-10-714, MCA, is amended to read:

23 **"75-10-714. Administrative penalties.** (1) In lieu of proceeding under 75-10-711(5), the  
24 department may assess penalties of not more than \$1,000 ~~per a day per~~ for each violation against a  
25 person liable under 75-10-715(1) for a release or threat of release who has failed or refused to comply  
26 with an order issued by the department pursuant to 75-10-711(4) or against a person who has failed or  
27 refused to comply with an order issued by the department pursuant to 75-10-707(5).

28 (2) In determining the amount of any penalty assessed pursuant to this section, the department  
29 shall take into account the nature, circumstances, extent, and gravity of the noncompliance and, with  
30 respect to the person liable under 75-10-715(1);

- (a) ~~his~~ the person's ability to pay;
- (b) any prior history of ~~such~~ violations;
- (c) the degree of culpability;
- (d) the economic benefit or savings, if any, resulting from the noncompliance; and
- (e) any other matters ~~as~~ that justice may require.

(3) An administrative penalty may not be collected pursuant to this section unless the person charged with the noncompliance is given notice and opportunity for a hearing with respect to the noncompliance. ~~The notice and opportunity for a hearing must conform to the requirements of Title 2, chapter 4, part 6~~ is before the board of environmental review. A hearing may be requested by submitting a written request stating the reason for the request within 30 days after receipt of the notice of penalty assessment.

(4) ~~A person against whom a penalty is assessed under this section may obtain judicial review of the penalty as provided for in~~ The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 7 6, apply to a hearing held under this section.

(5) Administrative penalties ~~payable~~ collected under this section must be deposited in the environmental quality protection fund established in 75-10-704."

**Section 4.** Section 76-4-108, MCA, is amended to read:

**"76-4-108. Enforcement.** (1) If the reviewing authority has reason to believe that a violation of this part or a rule ~~made~~ adopted under it ~~this part~~ has occurred, it ~~the reviewing authority~~ may have written notice and an order served personally or by certified mail ~~to the last known address of~~ on the alleged violator or ~~his~~ the alleged violator's agent. The notice ~~shall~~ must state the provision alleged to be violated, the facts alleged to constitute the violation, the corrective action required by the reviewing authority, and the time within which the action is to be taken. ~~For the purpose of this part, service by mail is complete on the date of mailing.~~ The alleged violator may, no later than 30 days after service of a notice and order under this section, request a hearing before the local reviewing authority if it issued the notice of violation or the board if the department issued the notice of violation. A request for a hearing must be filed in writing with the appropriate entity and must state the reason for the request. If a request is filed, a hearing ~~shall~~ must be held within a reasonable time.

(2) In addition to or instead of issuing an order, the reviewing authority may initiate any other

1 appropriate action to compel compliance with this part.

2 (3) The provisions of this part may be enforced by a reviewing authority other than the department  
3 or board only for those divisions described in 76-4-104(3). If a local reviewing authority fails to adequately  
4 enforce the provisions of this part, the department or the board may compel compliance with this part  
5 under the provisions of this section.

6 (4) When a local reviewing authority exercises the authority delegated to it by this section, the  
7 local reviewing authority ~~shall accept legal responsibility~~ is legally responsible for its actions under this  
8 part.

9 (5) If the department or a local reviewing authority determines that a violation of this part is found  
10 to exist has occurred, the department or a the local reviewing authority may revoke a its certificate of  
11 approval for the subdivision and reimpose sanitary restrictions on a subdivision, following a hearing before  
12 the reviewing authority under this section written notice to the alleged violator. Upon revocation of a  
13 certificate, the person aggrieved by revocation may request a hearing. A hearing request must be filed in  
14 writing within 30 days after receipt of the notice of revocation and must state the reason for the request.  
15 The hearing is before the board if the department revoked the certificate or before the local reviewing  
16 authority if the local reviewing authority revoked the certificate.

17 (6) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter  
18 4, part 6, apply to a hearing held under this section. "

19

20 **Section 5.** Section 76-4-126, MCA, is amended to read:

21 **"76-4-126. Right to hearing.** (1) Upon a denial of approval of subdivision plans and specifications  
22 relating to environmental health facilities, the person who is aggrieved by such the denial may request a  
23 hearing before the board or the reviewing authority. A hearing request must be filed, in writing, within  
24 30 days after receipt of the notice of denial and must state the reason for the request. Such hearings will  
25 be held pursuant to The contested case provisions of the Montana Administrative Procedure Act, Title 2,  
26 chapter 4, part 6, apply to a hearing held under this section.

27 (2) If the grounds for a denial of approval under this part include noncompliance with local laws  
28 or regulations other than those adopting, pursuant to 50-2-116, state minimum standards for the control  
29 and disposal of sewage, the board shall upon receipt of a hearing request refer the local compliance issues  
30 to the appropriate local authority. After opportunity for a hearing, the local authority shall issue a

determination regarding the local compliance issues, and the board shall incorporate the determination of the local authority in the board's final decision."

**Section 6.** Section 82-4-112, MCA, is amended to read:

**"82-4-112. Administration.** (1) The department shall:

~~(1)(a)~~ exercise general supervision, administration, and enforcement of this part and all rules and orders adopted under this part;

~~(2)(b)~~ issue, ~~after an opportunity for hearing,~~ orders requiring ~~an operator~~ operators to adopt remedial measures necessary to comply with this part and rules adopted under this part;

~~(3)(c)~~ order the suspension of any permit for failure to comply with this part, any rule adopted under this part, or a permit issued pursuant to this part;

~~(4)(d)~~ issue, ~~after an opportunity for hearing, a final~~ order revoking a permit when the requirements set forth by ~~the~~ a notice of ~~noncompliance violation~~, order of suspension, or order requiring remedial measures have not been complied with according to the terms in the notice or order;

~~(5)(e)~~ order the halting of any operation that is started without first having ~~secured~~ obtained a permit as required by this part;

~~(6)~~ conduct hearings under provisions of this part or rules adopted by the board;

~~(7)(f)~~ make conduct investigations and inspections necessary to ~~insure~~ ensure compliance with this part; and

~~(8)(g)~~ encourage and conduct investigations, research, experiments, and demonstrations and collect and disseminate information relating to new strip mines, new underground mines, and reclamation of lands and waters affected by preparatory work.

(2) The board shall conduct hearings under this part or rules adopted by the board."

**Section 7.** Section 82-4-130, MCA, is amended to read:

**"82-4-130. Procedure for hearings and appeals.** (1) A person aggrieved by a final decision of the department under this part may request a hearing before the board by submitting a written request stating the reason for the request within 30 days after the department's decision.

(2) All hearing and appeal procedures shall be in accordance with The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this

1 part."

2

3 **Section 8.** Section 82-4-205, MCA, is amended to read:

4 **"82-4-205. Administration by department and board.** (1) The department:

5 ~~(1)~~(a) shall exercise general supervision, administration, and enforcement of this part and all rules  
6 and orders adopted under this part;

7 ~~(2)~~(b) shall ~~examine and pass upon~~ review for approval or disapproval all plans and specifications  
8 submitted by ~~the~~ an operator for the method of operation, subsidence stabilization, water control,  
9 backfilling, grading, highwall reduction, and topsoiling and for the reclamation of the area of land affected  
10 by the operator's operation;

11 ~~(3)~~(c) shall issue orders requiring an operator to adopt the remedial measures necessary to comply  
12 with this part and rules adopted under this part;

13 ~~(4)~~(d) shall order the suspension of any permit for failure to comply with this part or a rule adopted  
14 under this part;

15 ~~(5)~~(e) shall issue, ~~after an opportunity for hearing, a final~~ order revoking a permit when the  
16 requirements set forth by a notice of noncompliance violation, order of suspension, or order requiring  
17 remedial measures have not been complied with according to the terms in the notice or order;

18 ~~(6)~~(f) shall order the halting of any operation that is started without first having ~~secured~~ obtained  
19 a permit as required by this part or order the cessation of operations not in compliance with this part in  
20 accordance with 82-4-251;

21 ~~(7)~~(g) shall conduct public hearings required under ~~the provisions of~~ this part or rules adopted by  
22 the board;

23 ~~(8)~~(h) shall ~~make~~ conduct investigations and inspections necessary to ensure compliance with this  
24 part; and

25 ~~(9)~~(i) may encourage and conduct investigations, research, experiments, and demonstrations and  
26 collect and disseminate information relating to strip mining and to underground mining and reclamation of  
27 lands and waters affected by strip mining and underground mining;

28 ~~—— (10) may conduct hearings under the provisions of this part.~~

29 (2) The board shall conduct contested case hearings under this part or rules adopted by the  
30 board."

1

2       **Section 9.** Section 82-4-206, MCA, is amended to read:

3       **"82-4-206. Procedure for contested case hearings ~~and appeals~~.** (1) A person aggrieved by a final  
4 decision of the department under this part may request a hearing before the board by submitting a written  
5 request stating the reason for the request within 30 days after the department's decision.

6       (2) All hearings and appeal procedures shall be in accordance with parts 6 and 7 of chapter 4. The  
7 contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply  
8 to a hearing before the board under subsection (1)."

9

10       **Section 10.** Section 82-4-254, MCA, is amended to read:

11       **"82-4-254. Violation -- penalty -- waiver.** (1) Except as provided in subsection (2), a person or  
12 operator who violates any of the provisions of this part, rules or orders adopted under this part, or term  
13 or condition of a permit and any director, officer, or agent of a corporation who willfully authorizes, orders,  
14 or carries out a violation shall pay ~~a civil or administrative~~ A CIVIL penalty of not less than \$100 or more  
15 than \$5,000 for the violation and an additional ~~civil or administrative~~ CIVIL penalty of not less than \$100 or  
16 more than \$5,000 for each day during which a violation continues and may be enjoined from continuing  
17 the violations as provided in this section. Any person or operator who fails to correct a violation within the  
18 period permitted by law, rule of the board, or order of the department ~~shall~~ must be assessed ~~a an~~  
19 ~~administrative~~ A penalty of not less than \$750 for each day, up to 30 days, during which the failure or  
20 violation continues. The period permitted for correction of a violation does not, in the case of any review  
21 proceeding under 82-4-251(6), end until entry of a final order suspending the abatement requirements or  
22 until entry of an order of court ordering suspension of the abatement requirements. If the failure to abate  
23 continues for more than 30 days, the department shall, within 30 days after the 30-day period, take  
24 appropriate action pursuant to 82-4-251(3) or request action under subsection (4) or (6) of this section.

25       (2) The department may waive the ~~civil or administrative~~ CIVIL penalty for a minor violation of this  
26 part, a rule or order adopted under this part, or a term or condition of a permit if the department  
27 determines that the violation is not of potential harm to public health, public safety, or the environment  
28 and does not impair the administration of this part. The board shall adopt rules to implement and administer  
29 a procedure for waiver of a penalty under this subsection.

30       (3) The department shall notify the person or operator of the violation. By filing a written request



1 within 20 days of receipt of the notice of violation, stating the reason for the request, the person or  
2 operator is entitled to a hearing before the board under 82-4-206 on the issues of whether the alleged  
3 violation has occurred and whether the penalty proposed to be assessed is proper. The department shall  
4 issue a statement of proposed penalty no more than 10 days after issuing the notice of violation. After  
5 ~~the a hearing or after the time for requesting a hearing has expired~~, the ~~department~~ board shall make  
6 findings of fact, ~~and~~ shall issue a written decision as to the occurrence of the violation and, if the board  
7 finds that the violation occurred, the amount of penalty warranted, and shall order the payment of ~~a the~~  
8 ~~penalty in that amount~~. If the time for requesting a hearing expires without a hearing request, the  
9 department shall make the findings of fact and issue the written decision and order. The person or operator  
10 shall remit the amount of the penalty within 30 days of the order. If the person or operator wishes to  
11 obtain judicial review of the assessment, the person or operator shall submit with the penalty a statement  
12 that the penalty is being paid under protest and the department shall hold the payment in escrow until  
13 judicial review is complete. Any person or operator who fails to request and submit testimony at the  
14 hearing provided for in this subsection or who fails to pay the assessed penalty under protest within 30  
15 days of the order assessing the penalty forfeits the right to seek judicial review of the violation or penalty  
16 determinations. These penalties are recoverable in any action brought in the name of the state of Montana  
17 by the attorney general in the district court of the first judicial district ~~of this state, in and for the county~~  
18 ~~of~~ Lewis and Clark County, or the district having jurisdiction over the defendant.

19 (4) The attorney general shall, upon request of the director of the department ~~environmental~~  
20 ~~quality~~, sue for the recovery of the penalties provided for in this section and bring an action for a  
21 restraining order or temporary or permanent injunction against an operator or other person who:

22 (a) violates, threatens to violate, or fails or refuses to comply with any order or decision issued  
23 under this part;

24 (b) interferes with, hinders, or delays the department in carrying out the provisions of this part;

25 (c) refuses to admit an authorized representative of the department to the permit area;

26 (d) refuses to permit inspection of the permit area by an authorized representative of the  
27 department;

28 (e) refuses to furnish any information or report requested by the department in furtherance of the  
29 provisions of this part; or

30 (f) refuses to permit access to and copying of records that the department determines to be

1 necessary in carrying out the provisions of this part.

2 (5) Any relief granted by a court under subsection (4)(a) continues in effect until the completion  
3 or final termination of all proceedings for review of relief granted under this part unless, prior to the final  
4 determination, the district court granting the relief sets it aside or modifies it.

5 (6) A person who violates any of the provisions of this part or any determination or order adopted  
6 under this part or who willfully violates any permit condition issued under this part is guilty of a  
7 misdemeanor and shall be fined an amount not less than \$500 and not more than \$10,000 or be  
8 imprisoned for not more than 1 year, or both. Each day on which the violation occurs constitutes a  
9 separate offense.

10 (7) Any person who knowingly makes any false statement, representation, or certification or  
11 knowingly fails to make any statement, representation, or certification in any application, record, report,  
12 plan, or other document filed or required to be maintained pursuant to this part shall upon conviction be  
13 punished by a fine of not more than \$10,000 or by imprisonment for not more than 1 year, or both.

14 (8) Any person who except as permitted by law willfully resists, prevents, impedes, or interferes  
15 with the department or its agents in the performance of duties pursuant to this part shall be punished by  
16 a fine of not more than \$5,000 or by imprisonment for not more than 1 year, or both.

17 (9) An employee of the department performing any function or duty under this part may not have  
18 a direct or indirect financial interest in any strip- or underground-coal-mining operation. A person who  
19 knowingly violates the provisions of this subsection shall upon conviction be punished by a fine of not  
20 more than \$2,500 or by imprisonment of not more than 1 year, or both."

21

22 **Section 11.** Section 82-4-338, MCA, is amended to read:

23 **"82-4-338. Performance bond.** (1) ~~The~~ An applicant for an exploration license or operating permit  
24 shall file with the department a bond payable to the state of Montana with surety satisfactory to the  
25 department in the sum to be determined by the department of not less than \$200 for each acre or fraction  
26 of an acre of the disturbed land, conditioned upon the faithful performance of the requirements of this part,  
27 the rules of the board, and the permit. In lieu of a bond, the applicant may file with the department a cash  
28 deposit, an assignment of a certificate of deposit, or other surety acceptable to the department. The bond  
29 may not be less than the estimated cost to the state to ensure compliance with this part, the rules, and  
30 the permit, including the potential cost of department management, operation, and maintenance of the site

1 upon temporary or permanent operator insolvency or abandonment, until full bond liquidation can be  
2 effected. A public or governmental agency may not be required to post a bond under the provisions of this  
3 part. A blanket performance bond covering two or more operations may be accepted by the department.  
4 A blanket bond must adequately secure the estimated total number of acres of disturbed land.

5 (2) The department shall conduct an overview of the amount of each bond annually and shall  
6 conduct a comprehensive bond review at least every 5 years. The department may conduct additional  
7 comprehensive bond reviews if, after modification of ~~the~~ a reclamation or operation plan, an annual  
8 overview, or an inspection of the permit area, the department determines that an increase of the bond level  
9 may be necessary. The department shall consult with the licensee or permittee if ~~the~~ a review indicates  
10 that the bond level should be adjusted. When determined by the department that the set bonding level of  
11 a permit or license does not represent the present costs of compliance with this part, the rules, and the  
12 permit, the department may modify the bonding requirements of that permit or license. The department  
13 shall make written findings, give the licensee or permittee a copy of the findings, and, for operating  
14 permits, publish notice of the findings in a newspaper of general circulation in the county in which the  
15 operation is located. The permittee or any person with an interest that may be adversely affected may  
16 obtain a contested case hearing before the board under the provisions of the Montana Administrative  
17 Procedure Act, Title 2, chapter 4, part 6, on the adjusted bond level by filing with the department within  
18 30 days of the notice a written request for hearing stating the reason for the request.

19 (3) A bond filed in accordance with the provisions of this part may not be released by the  
20 department until the provisions of this part, the rules adopted pursuant to this part, and the permit have  
21 been fulfilled.

22 (4) A bond filed for an operating permit obtained under 82-4-335 may not be released or  
23 decreased until the public has been provided an opportunity for a hearing and a hearing has been held if  
24 requested. The department shall provide reasonable statewide and local notice of the opportunity for a  
25 hearing, including but not limited to publishing the notice in newspapers of general daily circulation.

26 (5) All bonds required in accordance with the provisions of this section must be based upon  
27 reasonably foreseeable activities that the applicant may conduct in order to comply with conditions of an  
28 operating permit or license. Bonds may be required only for anticipated activities as described in subsection  
29 (1). Only those activities that themselves or in conjunction with other activities have a reasonable  
30 possibility of occurring may be bonded.

(6) At the applicant's discretion, bonding in addition to that required by this section may be posted. These unobligated bonds may, on the applicant's request, be applied to future bonds required by this section."

**SECTION 12.** SECTION 82-4-353, MCA, IS AMENDED TO READ:

**"82-4-353. Administrative remedies -- notice -- appeals -- parties.** (1) Upon receipt of an application for an operating permit, the department shall provide notice of the application by publication in a newspaper of general circulation in the area to be affected by the operation. The notice ~~shall~~ must be published once a week for 3 successive weeks.

(2) An applicant for a permit or license, or for an amendment or revision to a permit or license, may request a hearing on a denial of the application by submitting a written request for a hearing within 30 days of receipt of written notice of the denial. The request must state the reason that the hearing is requested.

(2)(3) All hearings and ~~appeal procedures~~ appeals under 82-4-337(3), 82-4-338(2), 82-4-341(7) and (8), 82-4-361, 82-4-362, and subsection (2) of this section ~~shall be~~ must be conducted by the board in accordance with the Montana Administrative Procedure Act. Any person whose interests may be adversely affected as a result of an action taken pursuant to this part may become a party to any proceeding held ~~hereunder~~ under this part upon a showing that ~~such~~ the person is capable of adequately representing the interests claimed.

(3)(4) As used in this section, "person" means any individual, corporation, partnership, or other legal entity."

**Section 13.** Section 82-4-361, MCA, is amended to read:

**"82-4-361. Violation -- penalties -- waiver.** (1) (a) The department may assess an administrative ~~civil~~ CIVIL penalty of not less than \$100 or more than \$1,000 for each of the following violations and an additional administrative ~~civil~~ CIVIL penalty of not less than \$100 or more than \$1,000 for each day during which the violation continues and may bring an action for an injunction from continuing the violation against:

(i) a person or operator who violates a provision of this part, a rule or order adopted under this part, or a term or condition of a permit; or

(ii) any director, officer, or agent of a corporation who willfully authorizes, orders, or carries out a violation of a provision of this part, a rule or order adopted under this part, or a term or condition of a permit.

(b) If the violation created an imminent danger to the health or safety of the public or caused significant environmental harm, the maximum penalty is \$5,000 for each day of violation.

(2) The department shall take into account the following factors in determining whether to ~~institute~~ ~~a civil~~ ~~assess an administrative~~ INSTITUTE A CIVIL penalty ~~action~~ ACTION and in determining the penalty amount:

(a) the nature, circumstances, extent, and gravity of the violation;

(b) the violator's prior history of violations;

(c) the economic benefit or savings, if any, to the violator resulting from the violator's action;

(d) the amounts voluntarily expended by the violator to address or mitigate the violation or impacts of the violation; and

(e) other matters that justice may require.

(3) The department may bring an action for a restraining order or a temporary or permanent injunction against an operator or other person violating or threatening to violate an order ~~adopted~~ issued under this part.

(4) The department shall notify the person or operator of the violation. The department shall issue a statement of proposed penalty within 30 days after issuing the notice of the violation. The person or operator, by filing a written request stating the reason for the request within 20 days of receipt of the notice of proposed penalty, is entitled to a hearing before the board on the issues of whether the alleged violation has occurred and whether the penalty proposed to be assessed is proper. After the hearing ~~or~~ ~~after the time for requesting a hearing has expired~~, the ~~department~~ board shall make findings of fact and issue a written decision as to the occurrence of the violation and, if the board finds that the violation occurred, whether the amount of penalty is warranted. The ~~department~~ board shall order the payment of a penalty in that amount. If the time for requesting a hearing expires without a hearing request, the department shall make the findings of fact and issue the written decision and order. The person or operator shall remit the amount of the penalty or petition for judicial review within 30 days of receipt of the order. A person or operator who fails to request the hearing provided for in this subsection or who fails to petition for judicial review within 30 days of receipt of the order forfeits that person's or operator's right

1 to seek judicial review of the violation or penalty determinations. These penalties are recoverable in an  
2 action brought by the department in district court.

3 (5) Legal actions for injunctive relief under this section must be brought in the district court of the  
4 county in which the alleged violation occurred or, if mutually agreed to by the parties to the action, in any  
5 other judicial district. Legal actions for review of penalty orders or for recovery of penalties must be  
6 brought in the district court in the first judicial district, Lewis and Clark County."

7

8 **Section 14.** Section 82-4-362, MCA, is amended to read:

9 **"82-4-362. Suspension of permits -- hearing.** (1) If any of the requirements of this part, of the  
10 rules adopted under this part, or of a license or permit has not been complied with, the department shall  
11 serve a notice of ~~noncompliance violation~~ violation on the licensee or permittee or, if necessary, the director shall  
12 order the suspension of the license or permit. ~~The~~ A license or permit may also be suspended for failure  
13 to comply with an order to pay ~~a civil or administrative~~ A CIVIL penalty if the order is not subject to  
14 administrative or judicial review. The director may order immediate suspension of a license or permit  
15 whenever the director ~~makes a finding~~ finds that a violation of this part, of the rules adopted under this  
16 part, or of a license or permit is creating an imminent danger to the health or safety of persons outside the  
17 permit area. The notice or order must be handed to the licensee or permittee in person or served on the  
18 licensee or permittee by certified mail addressed to the permanent address shown on the application for  
19 a license or permit. The notice of ~~noncompliance violation~~ violation or order of suspension must specify ~~in what~~  
20 ~~respects the operator has failed to comply with~~ the provision of this part, the rules adopted under this part,  
21 or the license or permit violated and the facts alleged to constitute the violation and must, if the violation  
22 has not been abated, order abatement within a specified time period.

23 (2) If the licensee or permittee has not complied with the requirements set forth in the notice of  
24 ~~noncompliance violation~~ violation or order of suspension within the time limits set in the notice or order, the license  
25 or permit may be revoked by order of the department and the performance bond forfeited to the  
26 department. ~~The licensee or permittee is entitled to a hearing before the department on the revocation of~~  
27 ~~a permit or license or the forfeiture of a performance bond if a hearing is requested within 30 days after~~  
28 ~~service of notice as provided in subsection (1).~~ The notice of violation or order of suspension must state  
29 when those measures may be undertaken and must give notice of the opportunity for a hearing before the  
30 board. A hearing may be requested by submitting a written request stating the reason for the request to

1 the board within 30 days after receipt of the notice or order. If a hearing is requested within the 30-day  
2 period, the ~~permit or license or permit~~ may not be revoked and the bond may not be forfeited until a final  
3 decision is made by the ~~department~~ board.

4 (3) If a permittee fails to pay the fee or file the report required under 82-4-339, the department  
5 shall serve notice of this failure, by certified mail or personal delivery, on the permittee. If the permittee  
6 does not comply within 30 days of receipt of the notice, the director shall suspend the permit. The director  
7 shall reinstate the permit upon compliance."

8  
9 **Section 15.** Section 82-4-422, MCA, is amended to read:

10 **"82-4-422. Powers, duties, and functions.** (1) The department has the powers, duties, and  
11 functions to:

12 (a) issue permits when it is found on the basis of the information set forth in the application and  
13 an evaluation of the operation by the department that the requirements of the part or rules will be observed  
14 and that the operation and the reclamation of the affected area can be carried out consistently with the  
15 purpose of the part;

16 ~~(b) conduct hearings and, for the purposes of conducting those hearings, administer oaths and~~  
17 ~~affirmations, subpoena witnesses, compel attendance of witnesses, hear evidence, and require the~~  
18 ~~production of any books, papers, correspondence, memoranda, agreements, documents, or other records~~  
19 ~~relevant or material to the inquiry;~~

20 ~~(e)(b)~~ reclaim any affected land with respect to which a bond has been forfeited; and

21 ~~(d)(c)~~ make investigations or inspections that are considered necessary to ensure compliance with  
22 any provision of this part.

23 (2) The board shall ~~adopt rules~~:

24 (a) adopt rules that pertain to opencut mining in order to accomplish the purposes of this part; ~~and~~

25 (b) adopt rules establishing uniform procedures for filing of necessary records, for the issuance  
26 of permits, and for any other matters of administration not specifically enumerated in this part; ~~and~~

27 (c) conduct hearings and, for the purposes of conducting those hearings, administer oaths and  
28 affirmations, subpoena witnesses, compel attendance of witnesses, hear evidence, and require the  
29 production of any books, papers, correspondence, memoranda, agreements, documents, or other records  
30 relevant or material to the inquiry."

1

2       **Section 16.** Section 82-4-427, MCA, is amended to read:

3       **"82-4-427. Hearing.** (1) A person who is aggrieved by a final decision of the department under  
4 this part is entitled to a hearing before the board, if a written request is submitted to the board within 30  
5 days of the department's decision.

6       (2) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter  
7 4, part 6, governs hearings before the department and judicial review of those decisions apply to a hearing  
8 held under this section."

9

10       **Section 17.** Section 82-4-441, MCA, is amended to read:

11       **"82-4-441. Penalty -- enforcement.** (1) The department may assess against a person who violates  
12 any of the provisions of this part, rules adopted under this part, or provisions of a reclamation permit:

13       (a) ~~a civil or administrative~~ A CIVIL penalty of not less than \$100 or more than \$1,000 for the  
14 violation; and

15       (b) an additional ~~civil or administrative~~ CIVIL penalty of not less than \$100 or more than \$1,000 for  
16 each day during which a violation continues following the service of notice of the violation.

17       (2) The department shall take into account the following factors in determining whether to ~~institute~~  
18 ~~a civil or administrative~~ INSTITUTE A CIVIL penalty ~~action~~ ACTION and in determining the penalty  
19 amount:

20       (a) the nature, circumstances, extent, and gravity of the violation;

21       (b) the violator's prior history of violations;

22       (c) the economic benefit or savings, if any, to the violator resulting from the violator's action;

23       (d) the amounts voluntarily expended by the violator to address or mitigate the violation or impacts  
24 of the violation; and

25       (e) other matters that justice may require.

26       (3) The department shall notify the person or operator of the violation. ~~The person or operator is~~  
27 ~~entitled, by filing a written request within 20 days of receipt of the notice of violation, to a hearing on the~~  
28 ~~issues of whether the alleged violation has occurred and whether the penalty proposed to be imposed is~~  
29 ~~proper.~~ The department shall issue a statement of proposed penalty no more than 10 days after issuing  
30 the notice of violation. After the a hearing provided for in 82-4-427 or after the time for requesting a



1 ~~hearing has expired~~, the department board shall make findings of fact, issue a written decision as to the  
2 occurrence of the violation and, if the board finds that the violation occurred, the amount of penalty  
3 warranted, and order the payment of a penalty in that amount. If the time for requesting a hearing expires  
4 without a hearing request, the department shall make the findings of fact and issue the written decision  
5 and order. The person or operator shall remit the amount of ~~the~~ any penalty within 30 days of the order.  
6 If the person or operator wishes to obtain judicial review of the assessment, the person or operator shall  
7 submit with the penalty a statement that the penalty is being paid under protest and the department shall  
8 hold the payment in escrow until judicial review is complete. A person or operator who fails to request and  
9 submit testimony at the hearing provided for in this subsection or who fails to pay the assessed penalty  
10 under protest within 30 days of the order assessing the penalty forfeits the right to seek judicial review  
11 of the violation or penalty determinations. These penalties are recoverable in an action brought by the  
12 department in the district court of the first judicial district ~~of this state, in and for the county of~~ Lewis and  
13 Clark County, or in the district court of the county in which the opencut mine is located.

14 (4) The department may bring an action to enjoin an operator or other person violating or  
15 threatening to violate this part, rules adopted pursuant to this part, or a permit issued pursuant to this part  
16 in the district court of the first judicial district ~~of this state, in and for the county of~~ Lewis and Clark  
17 County, or in the district court of the county in which the opencut mine is located."

18

19 NEW SECTION. SECTION 18. SAVING CLAUSE. [THIS ACT] DOES NOT AFFECT RIGHTS AND DUTIES THAT  
20 MATURED, PENALTIES THAT WERE INCURRED, OR PROCEEDINGS THAT WERE BEGUN BEFORE [THE EFFECTIVE DATE OF THIS  
21 ACT].

22

23 NEW SECTION. SECTION 19. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL.

24

- END -